



The University of the State of New York

The State Education Department
State Review Officer
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No. 09-058

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the [REDACTED] School District

Appearances:

Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., attorneys for respondent, Susan T. Johns, Esq., of counsel

DECISION

Petitioner (the parent) appeals from the decision of an impartial hearing officer which denied her request to be reimbursed for her son's tuition costs at the Gow School (Gow) for the 2007-08 and 2008-09 school years. The appeal must be dismissed.

At the time of the impartial hearing, the student was attending the eighth grade at Gow, a residential school for boys grades 7-12 who have language based learning disabilities or "dyslexia" (Tr. pp. 866, 867, 872, 926). Gow is a private school that has not been approved by the Commissioner of Education as a school with which districts may contract to provide special education services for students with disabilities (see 8 NYCRR 200.1[d], 200.7). In this appeal, the parties do not dispute the student's eligibility for special education and related services as a student with a learning disability (see Joint Exs. 102 at p. 1; 125 at p. 1; see also 34 C.F.R. § 300.8[c][10][i]; 8 NYCRR 200.1[zz][6]).¹

¹ The parties do not dispute that the student is eligible for special education services, but the parent is dissatisfied that the Committee on Special Education (CSE) did not identify the student's learning disability as dyslexia on the student's individualized education program (IEP) (Pet. at p. 11). I note that the term learning disability includes the condition known as dyslexia (see 34 C.F.R. § 300.8[c][10][i]; 8 NYCRR 200.1[zz][6]). However, this aspect of the parties' disagreement in no way alters the student's eligibility to receive special education and related services under the Individuals with Disabilities Education Act (IDEA).

The student attended one of respondent's (the district's) schools in September 1999 when he entered kindergarten and began receiving "Title I" reading services during first grade; however, he was retained and placed in the grade one to two multi-age classroom and continued to receive Title I reading services during the following school year (Tr. pp. 711-12; Joint Exs. 3; 16 at p. 1). The instructional support team (IST) referred the student for a district psychoeducational evaluation in December 2001, which recommended continued remedial support (Joint Ex. 16 at p. 1). In November 2003, when the student was in the third grade, he was again referred for a district psychoeducational evaluation due to concerns regarding lack of academic growth, particularly with reading (id.). The results of the evaluation indicated that the student was cognitively functioning within the average range although his word reading, decoding, and spelling skills were "well below average" (id. at p. 4). The school psychologist noted that the student received substantial support from a remedial reading teacher (1:1 reading intervention three days per week for 30-minute sessions and small group intervention), but that he may require more support services and a referral to the Committee on Special Education (CSE) in the future (Joint Exs. 16 at p. 4; 17 at p. 1).

The student was referred to the CSE in March 2004 by his third grade teacher (Joint Ex. 17 at p. 1). The CSE determined that the student was eligible for special education services as a student with a learning disability; however, the parent enrolled the student in a private school for the 2004-05 school year (Tr. p. 26; Joint Ex. 21).

During the 2005-06 school year, the student attended the district program for two days and according to the parent, the student felt overwhelmed and unable to keep up academically and he returned to the private school for the duration of the 2005-06 school year (Tr. pp. 736-37). On December 22, 2005, the student underwent a private evaluation by a licensed psychologist due to concern with the student's reading ability (Joint Ex. 28 at p. 1). The psychologist reported that the student presented as a student with dyslexia (id. at p. 3).

Beginning in October 2006 while the student was attending sixth grade at the private school, the parent initiated meetings with the district to plan for the student's return to the district's school, communicated her concerns regarding the program used by the district to aid students with dyslexia, and advocated for use of a "multi-sensory, systematic and cumulative approach," specifically, the Wilson reading program (Wilson) (Tr. pp. 740-41, 750; Joint Ex. 41 at p. 1). The district made plans to pursue training for their staff in Wilson, but the training did not occur because of weather-related reasons (Tr. pp. 90-96; Joint Ex. 47 at p. 1).

On December 21, 2006, the CSE met to develop the student's 2006-07 individualized education program (IEP) and recommended a 15:1 reading program five days per week for 40-minute sessions and resource room services three days per week for 40-minute sessions (Joint Ex. 48 at pp. 1, 5).² The student attended the district school for approximately five weeks, from mid-January 2007 to February 14, 2007, but according to the parent, the student felt "he couldn't keep up with the pace" and he returned to the private school in February 2007 (Tr. pp. 759-60, 763). However, the student ultimately left the private school and received home schooling until the end of the 2006-07 school year (Tr. pp. 128, 556, 763; Joint Ex. 94).

² The district did not have an IEP in place for the student at the beginning of the 2006-07 school year (Tr. p. 34).

By letter dated April 14, 2007 to the CSE chairperson, the parent requested an independent educational evaluation (IEE) at the district's expense (Joint Ex. 82). The parent stated that the student's school reports showed that he had made little or no progress in school over the past seven years and that testing had shown that his IQ was within the normal range (id.). An educational evaluation was conducted over eight days between May 21, 2007 and June 26, 2007 at district expense (Joint Ex. 98 at p. 1). Administration of the Woodcock-Johnson III Tests of Achievement (WJ-III ACH) revealed that the student's oral expression skills were average; the student's academic skills were low average; the student's fluency with academic tasks was low; and the student's academic knowledge and ability to apply academic skills were both within the average range (id. at p. 18). The evaluation further revealed that the student's performance in reading comprehension was in the high average range; the student's basic reading skills and math reasoning were in the average range; the student's broad reading and written expression were in the low average range; the student's math calculation skills and basic writing skills were in the low range; and the student's knowledge of phoneme-grapheme relationships was in the low average range (id.). The evaluator concluded that the student's difficulties with accurate and fluent word recognition, poor spelling, and decoding abilities were derived from a deficit in the phonological component of language (id.). The student was described as "highly visual in that he 'sees' language in his head, and when asked to recall auditory information he relies on these pictures to assist him with words" (id.). The evaluator referred to the student's pattern of weak sound-symbol associations and automaticity as "double-deficit dyslexia" and recommended a multisensory teaching method utilizing the Wilson or "Orton" approaches, on a daily basis with consistent and repetitive review, and recommended a variety of strategies to address the student's needs in phonemic awareness, automaticity, and fluency in reading and spelling (id. at pp. 18-20).

On August 21, 2007, the CSE met to develop the student's 2007-08 IEP (Joint Ex. 102 at p. 1). The meeting was attended by the parents, the district's CSE chairperson, middle school principal, guidance counselor, school psychologist, special education teacher, regular education teacher, an additional parent member, and the student's teacher from the private school that he had previously attended (Joint Ex. 103 at p. 1). Additional meeting attendees included two friends of the parent, an independent clinical psychologist, an independent evaluator, and both the attorney for the family and the attorney for the district (id. at p. 1). The student's classification as a student with a learning disability, in the areas of basic reading skills and written expression, was continued by the CSE in the August 21, 2007 IEP (Joint Ex. 102 at p. 1). The CSE recommended a 15:1 reading class five days per week for 40-minute sessions and resource room services five days per week for 40 minutes sessions (id. at p. 7).³ Program modifications and accommodations included preferential seating, provision of a peer note taker,

³ The August 21, 2007 IEP parenthetically indicated "mixed setting" next to the 15:1 reading class and resource room services to be provided (Joint Ex. 102 at p. 7). I note that one of the district's special education teachers who participated in the development of the student's August 21, 2007 IEP testified that the "mixed setting" delineated on the August 21, 2007 IEP was a "typo." (Tr. p. 652). However, I further note that the CSE chairperson testified that "mixed setting" was indicated on the student's 2007-08 IEP to allow for generalization of skills (Tr. p. 334). This was further explained by the CSE chairperson in questioning concerning an earlier IEP, as meaning that the instruction could be delivered in other settings (Tr. p. 281). The CSE chairperson explained, for example, that it was the district's "philosophy" that students develop skills in "isolation" in the resource rooms, and that "mixed settings" was written so that the special education teacher could take the students to the classroom and work on applying strategies if appropriate when the students were ready to generalize skills (Tr. p. 238). Regardless of the inconsistent testimony, I find that the hearing record does not demonstrate that this would have denied the student a free appropriate public education (FAPE).

allowance of typed or computer printed assignments, decreased length of academic tasks by 30 percent, modification of class assignments in length, allowance of a calculator, and use of graphic organizers, story maps, and visual aids (*id.*). Testing accommodations included extended time (double time); test directions, passages, questions, items and multiple-choice responses read to student; spelling requirements waived; alternate testing location; modified test content for "in district," teacher-made assessments; and calculator and word bank for local assessments (*id.* at p. 8). Recommended assistive technology devices for the student included books on tape and a spell check device (*id.* at p. 7). The August 21, 2007 IEP also indicated that staff would be provided with training once per year for 30 minutes on learning disabilities and dyslexia in order to assist teachers on instructing the student and that quarterly team meetings would take place to monitor the student's progress throughout the school year (*id.* at p. 8).

The August 21, 2007 IEP indicated that the CSE had before them academic evaluative data provided by the May 21, 2007 IEE, (compare Joint Ex. 102 at pp. 2-3, with Joint Ex. 98 at pp. 7-8), results from a December 22, 2006 administration of the Qualitative Reading Inventory-4 (QRI-4), and a November 20, 2006 administration of the Gray Oral Reading Test-4 (GORT-4) (Joint Ex. 102 at p. 3). The student's most recent scores were from the May 21, 2007 administration of the WJ-III ACH and fell primarily in the average to low average range with the exception of the calculation subtest (low range) and the math fluency and spelling subtests (very low range) (Joint Exs. 98 at pp. 2-6; 102 at pp. 2-3). The student's scores on the QRI-4 indicated an instructional reading level of grade three and the results of the GORT-4 indicated that the student's performance was in the below average range with a standard score of 79 (Joint Ex. 102 at p. 3). The August 21, 2007 IEP also indicated that the student had completed the grade six New York State English language arts (ELA) exam on January 16, 2007 and had met the standard with a score of 650 at Level 3 (*id.*). The independent evaluator who conducted the May 21, 2007 IEE summarized her report at the August 21, 2007 CSE meeting, noted the student's strengths and weaknesses, and made suggestions regarding instructional strategies (Tr. p. 134; Joint Ex. 103 at p. 2). The CSE chairperson testified that at the August 21, 2007 CSE meeting, there was a consensus regarding the student's present levels of both academic and social-emotional performance and that after reviewing each goal individually, members of the CSE, including the independent evaluator, agreed that the goals were appropriate (Tr. pp. 134-37). The CSE chairperson also testified that the parent did not object to the accuracy or sufficiency of the goals at the August 21, 2007 CSE meeting (Tr. pp. 137-38).

The student's present levels of performance on the August 21, 2007 IEP indicated that the student was motivated to improve his academic skills, was very knowledgeable, and that he exhibited strengths in vocabulary, oral and reading comprehension, language skills, and reasoning skills (Joint Ex. 102 at p. 3). The August 21, 2007 IEP indicated weaknesses in applying decoding skills with automaticity and difficulty with multisyllabic and unfamiliar words, which affected the student's reading fluency (*id.*). The August 21, 2007 IEP indicated that the student's spelling was phonetic and that he needed to learn reading and spelling rules for non-phonetic words to increase his fluency in reading and writing tasks (*id.*). Additionally, the August 21, 2007 IEP indicated that the student had difficulty with sequencing and organizing his thoughts, punctuation, editing, and that the student had weak basic computation skills in math (*id.* at pp. 3-4). The August 21, 2007 CSE meeting minutes reflected that a discussion regarding the student's limited math instruction took place and that academic instruction services (AIS) was determined to be sufficient to meet the student's math needs at that time (Joint Ex. 103 at p. 2).

The present levels of social-emotional development portion of the August 21, 2007 IEP described the student as outgoing and friendly, able to get along well with adults and peers, and indicated that there were no needs in that area (Joint Ex. 102 at p. 4). The student's present level of physical development on the August 21, 2007 IEP also indicated no needs (id.). The student's management needs identified in the August 21, 2007 IEP included teacher awareness and sensitivity to the student's stress levels, as academic challenges and singling the student out for academic assistance could increase the student's stress level (id. at p. 5).

The August 21, 2007 IEP addressed the student's identified need to increase his reading fluency with goals that focused on increasing the student's reading and spelling of high frequency sight words, identifying words within words to improve decoding skills and increasing his oral reading fluency from level 3 to level 4 on the "DIBELS"⁴ (Joint Ex. 102 at p. 5). The August 21, 2007 IEP also included goals and short-term objectives to address the student's automaticity with multiplication facts and naming the needed operation for one step word problems, as well as goals and short-term objectives to address his needs in writing and spelling (id. at p. 6).

The August 21, 2007 IEP indicated that the student was capable of fully participating in the seventh grade curriculum, but that in addition he needed "intensive, direct instruction in basic reading skills using a systematic, multi-sensory approach in lieu of study halls" and also "need[ed] academic support for written expression, math, organizational skills, program modifications, and test accommodations" (Joint Ex. 102 at p. 9). Resource room support alone was considered and rejected as it would not meet the student's needs in the area of basic reading, primary instruction in a self-contained program was deemed too restrictive, and the parent's proposed private residential placement at Gow was also deemed too restrictive as the student would not have instruction with typical peers (id.).

The attorney for the parent stated at the August 21, 2007 CSE meeting that the district could not meet the student's needs with the proposed level of service. Since the CSE was unable to come to a consensus regarding the student's program, the CSE recommendation was made by the CSE chairperson on behalf of the committee (Joint Ex. 103 at p. 2).

The student began attending Gow in the seventh grade for the 2007-08 school year (Joint Exs. 132; 134).

In April 2008, the student was administered the Stanford Achievement Test – Tenth Edition (Stanford 10) while attending the seventh grade at Gow (Joint Ex. 119 at p. 5).⁵ The

⁴ It is presumed that DIBELS refers to Dynamic Indicators of Early Literacy Skills and the hearing record indicated that it is a test of oral reading fluency (Tr. p. 621).

⁵ The Stanford 10 test report compared the student's performance to students in the same grade across the nation (Joint Ex. 119 at p. 5). The reading subtests measured relating word sounds and spellings, determining word meanings and synonyms, as well as the understanding, interpretation, and analysis of literary, informational, and functional reading selections (id.). The mathematics subtests measured problem solving skills involving number sense and operations; patterns and mathematical relationships; algebra, data, and statistics; probability; geometry; and measurement (id.). This portion of the test also measured fluency with arithmetic operations involving whole numbers, decimals, fractions, and integers (id.). The language subtest measured the student's application of language principals that make up effective writing such as for a school assignment, such as prewriting, composition, organization, and mechanics (capitalization and punctuation) (id.).

student achieved a total reading score in the average range, a total mathematics score in the average range, and a language score in the below average range for seventh grade (id.).

In preparation for the May 28, 2008 CSE meeting, the CSE chairperson conducted an observation of the student at Gow on May 2, 2008 during the student's reconstructive language class (which was the student's primary reading instruction) and during a writing portfolio assessment in the student's English class (Tr. pp. 155-57, 162-64, 528-31; Joint Ex. 116 at pp. 1-2).

An academic report from Gow dated May 27, 2008, contained the student's grades for the 2007-08 school year (Joint Ex. 122 at p. 1). The student's grade point average (GPA) ranged from 3.57 to 3.83 over the course of the academic year with a final GPA of 3.56 (id.). The report reflected that the student had participated in English 7.2, history 7, developmental mathematics, general science 7, middle school health, reconstructive language 7, and introduction to arts 7 (id.). The report further reflected that the student's grades in all subjects for the four marking periods were in the A to B range (id.). The report indicated that the student had difficulty with some of the vocabulary and recurring themes, but was willing to ask questions during class (id. at p. 2). The report further indicated that the student utilized hand gestures in the reconstructive language class to assist in the learning of phonics cards and often added rhythm when reciting phonics cards, which allowed the student to earn 100 percent on his final test (id. at p. 5). The report also indicated that the student's word attack skills continued to improve as he became more confident (id.).

The CSE convened on May 28, 2008 for the student's annual review and to develop the student's IEP for the 2008-09 school year (Joint Ex. 125 at p. 1). The meeting attendees included the student's mother, the district CSE chairperson, principal, guidance counselor, school psychologist, special education teacher, regular education teacher, an additional parent member, and both the district's and the family's attorneys (id. at p. 11). The student's father, the director of Gow, and the student's English teacher from Gow attended via telephone (id.). The student's classification as a student with a learning disability in the areas of basic reading skills and written expression was continued by the CSE in the May 28, 2008 IEP (id. at p. 1). The CSE recommended a 15:1 language arts class five days per week for 40-minute sessions (outside the general education setting) and resource room services five days per week for 40-minute sessions (outside the general education setting) (id. at p. 8). The 2008-09 IEP also provided that the student would receive AIS in math for three out of six days per week on a six day cycle (id.). In addition to the program modifications, accommodations, and assistive technology devices listed on the student's August 21, 2007 IEP, the student's May 28, 2008 IEP recommended additional assistive technology supports including text reading software, text-to-speech software, and a word processor with spell check and word prediction software (id. at p. 9). The same testing accommodations listed on the student's August 21, 2007 IEP were continued by the CSE in the student's May 28, 2008 IEP (compare Joint Ex. 102 at p. 8, with Joint Ex. 125 at pp. 9-10). The May 28, 2008 IEP identified the student's management needs as awareness and sensitivity by teachers to the student's stress levels, provision of additional time for the student to adjust to changes in routine and class expectations, and access to assistive technology as listed above to enable the student to fully participate in the general education curriculum (Joint Ex. 125 at p. 6). The May 28, 2008 IEP indicated that staff would be provided with training once per year for 30 minutes on learning disabilities and dyslexia in order to assist teachers in instructing the student

and that 30-minute quarterly team meetings would take place to monitor the student's progress throughout the school year (id. at p. 9).

The May 28, 2008 IEP reflected that the CSE had before them current evaluative data which included the student's performance on an April 15, 2008 GORT-4, an April 8, 2008 Stanford 10, and a May 27, 2008 progress report of the student completed by staff at Gow (Joint Ex. 125 at pp. 2, 3, 4).⁶ The student's scores on the GORT-4 indicated performance in the average range in accuracy and comprehension and in the "poor" to below average range in fluency and rate (id. at p. 2). The student's scores on the Stanford 10 indicated that his performance was in the average range for the seventh grade level in total reading and total mathematics and in the below average range in language (Joint Ex. 119 at p. 5).

The present levels of performance section of the student's May 28, 2008 IEP reflected information from the reports provided to members of the CSE (Joint Ex. 125 at pp. 4-5). In addition to the student's abilities previously noted on the August 21, 2007 IEP, the May 28, 2008 IEP present levels of academic performance indicated that the student's performance on the April 15, 2008 GORT-4 was in the average range for reading accuracy and comprehension skills, and in the below average range in reading rate and fluency (id. at p. 5). The May 28, 2008 IEP indicated that, as reported by Gow, the student had excellent class participation, homework completion, and a strong desire to do well (id. at pp. 4, 5). The May 28, 2008 IEP indicated that the student continued to exhibit needs in reading, written expression, as well as math skills (id. at p. 5). The IEP also indicated that the student needed to use process writing skills to complete written assignments, needed support for sequencing/organizing ideas particularly in content area writing assignments, and also needed to develop reading vocabulary in content areas (id.). With regard to transition, the IEP reflected that the student was interested in science, space, and holistic medicine, and that he needed to begin exploring career opportunities within his areas of interest (id.).

Regarding the student's present levels of social-emotional development, the May 28, 2008 IEP indicated that the student continued to get along well with others and that, as reported by Gow, the student's class participation was excellent (Joint Ex. 125 at p. 5). The May 28, 2008 IEP indicated that the student had no needs in that domain (id.). The student's present levels of physical development indicated that the student was a healthy, active student who enjoyed physical activities and had no needs in that domain (id. at p. 6).

The May 28, 2008 IEP addressed the student's identified needs in reading fluency with goals that focused on increasing the student's ability to read and spell high frequency sight words, improving his decoding skills while reading eighth grade level content material, and increasing his oral reading fluency (Joint Ex. 125 at pp. 6-7). The May 28, 2008 IEP also contained goals and short-term objectives to address the student's identified needs in written expression and math (id. at pp. 7-8).

The May 28, 2008 IEP indicated that the CSE considered several programs for the student including consultant teacher support, resource support, 15:1 primary instruction in reading and language arts, and the parent's proposed placement at Gow (Joint Ex. 125 at p. 10).

⁶ The CSE meeting minutes indicated that Gow faxed achievement test results to the CSE on May 24, 2008, that many of the scores were illegible, and that several errors and omissions were corrected (Joint Ex. 126 at p. 2).

The May 28, 2008 CSE determined that consultant teacher and resource support alone would not meet the student's needs in reading, that primary instruction in a self-contained program was too restrictive as the student was capable of completing the eighth grade general education curriculum with support and modifications, and that the parent's proposed placement at Gow would be too restrictive as the student would not have access to instruction with non-disabled peers (id.).

The May 28, 2008 CSE meeting minutes indicated that the student's present level of educational performance was summarized and reviewed and that a consensus was reached on all abilities, needs, goals, program modifications, and test accommodations (Joint Ex. 126 at p. 2). However, the attorney for the parent stated at the May 28, 2008 CSE meeting that the district could not meet the student's needs with the proposed level of service and therefore, the CSE was unable to come to a consensus regarding the student's program and the CSE recommendation was made by the CSE chairperson on behalf of the CSE (id.).

By due process complaint notice dated August 12, 2008, the parent requested an impartial hearing which is the subject of this appeal (Joint Ex. 1). The parent alleged that the IEPs for the 2007-08 and 2008-09 school years were inappropriate (id. at pp. 6, 8-9). Specifically, she alleged that: (1) the student has an anxiety disorder regarding school attendance, which has not been appropriately addressed by the district; (2) the student's dyslexia has never been appropriately addressed by the district; (3) the district never acquired appropriate training in order to address the student's dyslexia; (4) the IEPs did not meet the student's special education needs; (5) the IEPs did not adequately acknowledge the student's dyslexia or provide services to address learning disabilities; (6) the IEPs did not contain the requisite data concerning the student's present levels of performance; (7) the CSE failed to conduct appropriate evaluations in all areas of suspected disability; (8) the IEPs failed to adequately and specifically address the student's needs in relation to all of the student's disabilities; (9) the recommended services in the student's IEPs were substantially inappropriate, inadequate, and inconsistent with the available evaluations and observations; (10) the goals in the student's IEPs were not appropriate or measurable; (11) the IEPs did not provide adequate support for school personnel to provide appropriate education to a dyslexic student; and (12) the IEPs did not address the student's self-esteem issues and therefore, did not propose adequate related services (id. at pp. 2-9). The parent further asserted that the student's placement at Gow for the 2007-08 and 2008-09 school years was appropriate and that equitable considerations favored the parent (id. at pp. 9-10). For relief, she requested tuition reimbursement for the 2007-08 and 2008-09 school years at Gow and an order placing the student at Gow for the remainder of the student's "attendance entitlement" under the Individuals with Disabilities Education Act (IDEA) (id. at pp. 10-11).

An impartial hearing began on December 11, 2008 and concluded on January 21, 2009, after five days of testimony (Tr. pp. 1, 254, 416, 598, 821). By decision dated April 14, 2009, the impartial hearing officer found that the district had offered the student a free appropriate public education (FAPE) for the 2007-08 and 2008-09 school years and denied the parent's request for reimbursement of tuition costs at Gow (IHO Decision at p. 31). Initially, the impartial hearing officer considered the appropriateness of the student's August 21, 2007 IEP and the district's recommended special education program for the 2007-08 school year (id. at pp. 11, 15-25). The impartial hearing officer concluded that the August 2007 IEP and its recommendations were reasonably calculated to provide educational benefits to the student (id. at pp. 20-24). The impartial hearing officer found that the evaluations used in the development

of the August 2007 IEP were the most recent available evaluations (id. at p. 20). The impartial hearing officer further found that testimony of the student's private school teacher, the independent evaluator, and the two district special education teachers indicated that the student's present levels of performance were included in the August 2007 IEP (id. at p. 20). The impartial hearing officer noted that the August 2007 IEP indicated three areas of need: (1) reading, decoding, fluency, and spelling; (2) written expression, editing, sequencing/organizing of ideas, spelling, and content area assignments; and (3) mathematics, multiplication facts, and solving word problems (id.). The impartial hearing officer found that the August 2007 IEP goals addressed "nearly all" of the student's needs identified in the evaluations and in testimony presented at the impartial hearing and were designated to meet the student's educational needs (id. at p. 22). Furthermore, the impartial hearing officer found that the parent did not present evidence that Wilson was the only effective reading program to address the student's needs (id. at p. 24). In addition, the impartial hearing officer found that the parent fully participated at the August 2007 CSE meeting, as did the student's private school teacher and the independent educational evaluator (id.). The impartial hearing officer found that the evaluations presented at the impartial hearing assessed the student's specific area of educational need, that each goal which addressed the student's unique needs was discussed at the August 2007 CSE meeting, that all revisions took place at the meeting, and that there was no disagreement among the participants as to the student's present levels of performance (id.). The impartial hearing officer found that no evidence was presented that the student possessed any emotional or behavioral needs that warranted a residential placement (id.).

The impartial hearing officer next considered the appropriateness of the student's May 28, 2008 IEP and the district's recommended special education program for the 2008-09 school year (IHO Decision at p. 25). The impartial hearing officer found that the May 28, 2008 IEP reflected the student's needs in detail and was consistent with the student's progress reports, extensive evaluations, including an IEE, and a classroom observation (id. at p. 31). As to the parent's contentions that a particular methodology – Wilson – was required, the impartial hearing officer found that, while there was no reason to doubt the testimony advocating the exclusive use of the Wilson methodology to address the student's dyslexia, the program used at Gow was an "offshoot" of the Orton-Gillingham methodology, and Gow staff testified that a multisensory approach was not unique to a particular methodology (id.). The impartial hearing officer cited testimony by the CSE chairperson that the district's teachers were trained in the Donna Scanlon methodology and used Preventing Academic Failure and Merrill Reading Programs, which were considered multisensory (id.). Ultimately, the impartial hearing officer found that the May 2008 IEP was in compliance with IDEA procedures and that there was a reasonable expectation that the recommended program would confer educational benefits to the student (id.). The impartial hearing officer concluded that the district offered the student a FAPE for the 2007-08 and 2008-09 school years (id. at p. 31). Accordingly, the parent's request for reimbursement for their unilateral placement of the student at Gow was denied (id.).

The parent appeals the impartial hearing officer's decision that the district offered the student a FAPE for the 2007-08 and 2008-09 school years. Specifically, the parent contends, among other things, that: (1) the impartial hearing officer's decision was not supported by specific facts; (2) the impartial hearing officer did not act in a professional "impartial manner;" (3) the impartial hearing officer allowed evidence to be admitted into the hearing record after five days prior to the start of the hearing; (4) the district failed to provide the services it stated it

would provide in accordance with the student's IEP;⁷ (5) the impartial hearing officer failed to acknowledge or hold the district accountable for the student's four years of failure at the district school, which created a four year gap in his learning and failed to hold the district accountable for the district's lack of a specific diagnosis of the student's learning disability; (6) the impartial hearing officer did not support his statement that the district's program offered both a resource program to provide supplementary instruction to the student's general education and special education program, as well as a special class program to address the student's unique needs; (7) the impartial hearing officer failed to acknowledge testimony that no services were provided to the student by the district while at the private school; (8) the impartial hearing officer failed to hold the district accountable for the 2007-08 IEP goals and objectives that were not measurable or not consistent with the student's academic ability; (9) in the IEP prepared for the 2008-09 school year, the goals were not consistent with the student's academic abilities and could not be achieved; (10) both IEPs ignored the specific recommendations made by the independent evaluator that the student needed to be instructed in a consistent, comprehensive manner using a technique such as Wilson and other recommendations; (11) the impartial hearing officer ignored testimony that the student was not ready to come back to the district; (12) the student still required the small classes, direct and explicit instruction, and Orton-Gillingham based reading program that Gow offers; and (13) the district still has no teachers trained and certified in Orton-Gillingham or Wilson-based reading programs and can only offer generic resource room assistance that is not specific to any one learning disability.

For relief, the parent seeks reimbursement of the portion of tuition at Gow that she paid for the 2007-08 school year, reimbursement to Gow for the tuition assistance that was provided for both school years, reimbursement of the portion of tuition that the student's grandfather paid for the 2008-09 school year, and reimbursement to the parent for attorney's fees.⁸ The parent also seeks continued payment of tuition at Gow or a similar school that specifically addresses the needs of dyslexic children until the student graduates and an apology by the district to the student.

The district answers and asserts that the petition for review should be dismissed on procedural grounds. The district further contends that the parent lacks standing to recover financial aid received from Gow which was used to reduce the amount owed for the student's tuition and that the parent lacks standing to recover the amount paid to Gow by the student's grandfather. The district further contends that the impartial hearing officer correctly determined that the district offered the student a FAPE. The district asserts that the August 21, 2007 and May 28, 2008 IEPs were reasonably calculated to enable the student to receive educational benefits. The district further asserts that Gow was not appropriate to address the student's needs. Lastly, the district asserts that a State Review Officer lacks jurisdiction over the parent's claim for attorney's fees.

The parent filed a reply with attached additional evidence dated June 3, 2009. By letter dated June 4, 2009, the district requests that a State Review Officer reject the parent's reply and additional documents attached to the reply. The district asserts in the June 4, 2009 letter that the reply exceeds the permissible scope of a reply under State regulations and that the additional documents attached to the reply should be rejected because the documents are not contained in

⁷ The petition does not indicate which IEP the parent is referencing.

⁸ Although the parent was represented by counsel at the impartial hearing, she appears pro se on appeal.

the hearing record, the documents are not necessary for a determination, and there is no authority for submission of the additional documents. Pursuant to State regulations, a reply is limited to any procedural defenses interposed by a respondent or to any additional documentary evidence served with the answer (8 NYCRR 279.6; see Application of a Student with a Disability, Appeal No. 09-034; Application of a Student with a Disability, Appeal No. 08-036; Application of a Child with a Disability, Appeal No. 06-046). In this case, the district did not serve any additional evidence with its answer. Accordingly, I will accept and consider the reply only to the extent that it responded to procedural defenses interposed by the district (see Application of a Student with a Disability, Appeal No. 09-034; Application of a Student with a Disability, Appeal No. 08-036; Application of a Student with a Disability, Appeal No. 08-031; Application of a Student with a Disability, Appeal No. 08-028; Application of a Student Suspected of Having a Disability, Appeal No. 08-002). Moreover, I decline to accept the additional evidence submitted with the parent's reply as it does not respond to the district's procedural defenses (see 8 NYCRR 279.6).

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA (A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if a procedural violation is alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an impartial hearing officer's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 [2d Cir. 1998]; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore

_____, 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 C.F.R. §§ 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs (34 C.F.R. § 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals related to those needs (34 C.F.R. § 300.320[a][2]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (34 C.F.R. § 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9). Subsequent to its development, an IEP must be properly implemented (8 NYCRR 200.4[e][7]; Application of a Child with a Disability, Appeal No. 08-087).

The New York State Legislature amended the Education Law to place the burden of production and persuasion upon the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of production and persuasion regarding the appropriateness of such placement (Educ. Law § 4404[1][c], as amended by Ch. 583 of the Laws of 2007). The amended law took effect for impartial hearings commenced on or after October 14, 2007; therefore, it applies to the instant case (see Application of the Bd. of Educ., Appeal No. 08-016).

I will first address three procedural arguments pertaining to the papers filed by the parent on appeal. The district contends that the parent's pro se petition for review is procedurally defective because (1) it is not verified; (2) it does not contain numbered paragraphs; and (3) it does not provide adequate citations to the hearing record as required by State regulations (8 NYCRR 279.7, 279.8[a][3] and [b]). As to the first argument, I note that the petition filed with the Office of State Review on May 22, 2009 by the parent has a verification dated May 19, 2009 attached to it. Accordingly, I find the petition is properly verified. As to the remaining arguments, after due consideration and in the exercise of discretion, I decline to dismiss the petition for review, but remind the parent to comply with the form requirements of 8 NYCRR 279.8 in any future appeals (see Application of a Student with a Disability, Appeal No. 09-038; Application of a Student with a Disability, Appeal No. 08-003).

I will now turn to the merits of the parent's appeal. First, I will address the parent's contention that the April 14, 2009 decision by the impartial hearing officer is not supported by specific facts and does not contain a proper analysis. State regulations provide in relevant part that "[t]he decision of the impartial hearing officer shall set forth the reasons and the factual basis for the determination. The decision shall reference the hearing record to support the findings of fact" (8 NYCRR 200.5[j][5][v]). State regulations further require that an impartial hearing officer "render and write decisions in accordance with appropriate standard legal practice" (8 NYCRR 200.1[x][4][v]). A review of the impartial hearing officer's decision demonstrates that it contains citations to the hearing record, is supported by the hearing record, and that the impartial hearing officer sufficiently complied with the aforementioned regulations regarding factual and analytical content.

Second, regarding the parent's contention that the impartial hearing officer was not impartial, as set forth in greater detail below, the hearing record does not support her claim. Federal and State regulations provide that an impartial hearing officer shall not have a personal or professional interest that would conflict with his or her objectivity in the impartial hearing (34 C.F.R. § 300.511[c][1][i][B]; 8 NYCRR 200.1[x][3]; Application of a Child with a Disability, Appeal No. 01-046). An impartial hearing officer should avoid giving the appearance of impropriety (Application of a Child with a Disability, Appeal No. 07-008; Application of the Bd. of Educ., Appeal No. 03-015; Application of a Child with a Disability, Appeal No. 02-027; Application of a Child with a Disability, Appeal No. 00-063; Application of a Child with a Disability, Appeal No. 99-061; Application of a Child with a Disability, Appeal No. 99-025; Application of a Child with a Disability, Appeal No. 98-73; Application of a Child with a Disability, Appeal No. 98-55; Application of a Child with a Disability, Appeal No. 94-32). An impartial hearing officer, like a judge, must be patient, dignified, and courteous in dealings with participants in the impartial hearing process and must perform all duties without bias or prejudice in favor or against any person, and shall not, by words or conduct, manifest bias or prejudice, according each party the right to be heard (Application of a Child with a Disability, Appeal No. 07-090; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child Suspected of Having a Disability, Appeal No. 01-021; see 8 NYCRR 200.1[x][3], [4][v]). At all stages of the impartial hearing, an impartial hearing officer may "assist an unrepresented party by providing information relating only to the hearing process" (8 NYCRR 200.5[j][3][vii]). An impartial hearing officer must render a decision that is based solely upon the hearing record (8 NYCRR 200.5[j][5][v]; see Application of a Child with a Disability, Appeal No. 00-063; Application of a Child Suspected of Having a Disability, Appeal No. 00-036; Application of a Child with a Disability, Appeal No. 98-55). State regulations do not impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the hearing record (8 NYCRR 200.5[j][3][vii]). An impartial hearing officer has a responsibility to exclude evidence that she determines to be irrelevant, immaterial, unreliable, or unduly repetitious (8 NYCRR 200.5[j][3][xii][c]).⁹

⁹ As to the parent's contention that the impartial hearing officer erred by allowing evidence to be admitted that had not been disclosed to the parent under the "five day rule," I note that the parent does not specify the particular evidence at issue. A review of the hearing record indicates that the parent objected to the district's introduction of a copy of an e-mail from the parent to Gow because the document had not been disclosed in accordance with the "five day rule" (Tr. pp. 790-98; Joint Exs. 136; 137). The district indicated that it had obtained the e-mail from Gow by subpoena (Tr. p. 791). I note that the e-mail at issue concerns whether or not the parent had an obligation to reimburse Gow for the tuition assistance received (Joint Exs. 136; 137). I have considered the parent's objection and find that the admission of the e-mail does not rise to the level of denying the parent due process such that a FAPE was not offered to the student.

After reviewing the entire hearing record, I find that the evidence does not support the parent's contention that the impartial hearing officer was not impartial or acted in a manner that did not conform with federal and State regulations. Under the circumstances, while the parent disagrees with the conclusions reached by the impartial hearing officer, her disagreement does not provide a basis for finding that the impartial hearing officer acted with bias (Application of a Student with a Disability, Appeal No. 08-158; Application of a Child with a Disability, Appeal No. 07-078; Application of a Child with a Disability, Appeal No. 06-102; Application of a Child with a Disability, Appeal No. 06-013; Application of a Child with a Disability, Appeal No. 96-3; Application of a Child with a Disability, Appeal No. 95-75).

Third, I am not persuaded by the parent's assertion that the impartial hearing officer should have considered testimony or other evidence governing school years prior to 2007-08 in determining whether the district offered the student a FAPE for the 2007-08 and 2008-09 school years. For example, the parent contends on appeal that the impartial hearing officer failed to take note of the "inadequate and illegal" IEP for the student's fourth grade year. As another example, the parent contends on appeal that the impartial hearing officer erred in failing to "hold the district accountable" for the student's alleged four years of failure at the district school and for the district's lack of a specific diagnosis. I note that the parent only sought relief connected to the 2007-08, 2008-09 and prospective school years in her due process complaint notice and at the impartial hearing (see Joint Ex. 1). Moreover, the parent did not seek compensatory or additional services below nor does she seek such services on appeal. I find that allegations of errors or failures by the district in the years prior to the school years at issue (2007-08 school year and 2008-09 school year) do not affect my determination as to whether or not a FAPE was offered for the 2007-08 and 2008-09 school years. Accordingly, it was proper for the impartial hearing officer to render a decision without consideration of allegations regarding improprieties from school years before 2007-08.

Fourth, I find that the parent's assertion that the training of the district's teachers was inadequate and that the district only offered "generic resource room assistance that is not specific to one learning disability" to be unsupported by the hearing record. Regarding the 2007-08 school year, the hearing record reflects that the district's teacher of the proposed 15:1 reading class and resource room had an undergraduate degree in elementary education and a Master's degree in education, with a concentration in special education and learning disabilities (Tr. p. 672). I note that the hearing record indicates that the district's teacher was trained in multisensory methods, including the Lindamood-Bell Verbalizing and Visualizing program and Donna Scanlon's "Early Literacy Profile" (Tr. pp. 46-47, 48, 673, 674, 676).

During the 2007-08 school year, if the student had attended the district's school, he would have been the third student in the proposed 15:1 reading class (Tr. pp. 681-82). The district's special education teacher in the 15:1 reading class worked on sight words and spelling using a variety of activities that included the use of a computer (Tr. pp. 683-84). The teacher would have addressed the student's decoding skills using a Merrill linguistic program called "Preventing Academic Failure" (PAF), which according to the hearing record was a scientifically researched-based methodology based on the Orton-Gillingham approach (Tr. pp. 684-85). The district's special education teacher testified that PAF is very systematic, builds upon skills and uses kinesthetic learning, and that she had conducted research on PAF as part of her thesis program (Tr. pp. 684-86). The teacher addressed oral reading fluency daily using a variety of different

materials including materials she thought the students would see in their everyday life, such as "Points in History," which was written on a third grade level and which the class read together, "Reader's Theater,"¹⁰ and guided reading using the students' seventh grade content area textbooks (Tr. pp. 686-87). The teacher monitored the students' reading fluency once per week (Tr. p. 686).

As to the proposed resource room for the 2007-08 school year, the same special education teacher would also have been responsible for the student's resource room support (Tr. pp. 681, 688-89). If the student had attended the district's school, he would have been placed in a resource room class with no more than five students (Tr. p. 689). The resource room teacher is in constant contact with the regular education teachers regarding the content areas, receives assignments from the regular education teachers, keeps track of what the regular education teachers are teaching in the classroom, and modifies the work and the tests for the students (Tr. pp. 689-90). The resource room teacher also receives feedback from classroom teachers if the student is falling behind, not paying attention in class, exhibiting behaviors, or if homework is not turned in or is not organized (Tr. p. 690).

The teacher reviewed the student's IEP and testified that she would have addressed all of the goals on the IEP except math in the 15:1 reading class, including use of the word processor with spell check, the writing goals, and the spelling goal (Tr. pp. 681, 687). The teacher testified that she would have addressed the writing goals using a graphic organizer, beginning with writing a topic sentence, followed by detailed sentences, working up to a paragraph and an essay (Tr. p. 688). The teacher testified that she assisted students with their regular classroom essays by helping them break down their essays using graphic organizers and she kept track of their writing progress through "progress monitoring in writing" which looked at how many correct word sequences the students could write in three minutes (id.).

Regarding the 2008-09 school year, a second special education teacher testified for the district at the impartial hearing and indicated that she would have been the teacher for the student's proposed 15:1 language arts class and resource room (Tr. pp. 615-16 657, 658). The teacher had received an undergraduate degree and Master's degree in special education, training in Orton-Gillingham, and had recently completed a two-day training on the Visualizing and Verbalizing component of the Lindamood-Bell program (Tr. pp. 602, 603, 629- 30). The teacher testified that she had attended an annual dyslexia meeting (Tr. pp. 653-54).

Regarding the 2008-09 school year, the teacher testified that the student would have been the only student in the proposed 15:1 language arts class and he would have been in a resource room class with three other eighth grade students (Tr. pp. 616, 617, 618). The teacher indicated that she used an "Orton based" multisensory, interactive reading program called "Lexia SOS, Strategies for Older Students," which addresses "everything from nonsense words to full paragraph reading," and which keeps records on the students' progress (Tr. pp. 625, 661-62). For writing, the teacher testified that she uses word prediction software, which assists students in writing by predicting what they would like to say, helping with the spelling, and by putting sentences and paragraphs together (Tr. p. 625). For math, the teacher testified that she has been

¹⁰ "Reader's Theater" is described by the teacher as a program where a story is presented as a play and the class reads it together with each student assigned a part to read (Tr. p. 687).

using a basic skills program called "Math Magic," which is timed and gives immediate feedback to students (Tr. p. 626).

The teacher reviewed the student's IEP and testified that to address the student's goals, she would have used multisensory exercises such as "air writing" to address sight words and that the student's decoding goal would have been addressed by using daily practice of new words, word families, and looking for words within words (Tr. pp. 619-20). The teacher testified that she would address the student's oral reading fluency goal using the DIBELS program where the student would do a "cold reading" for a minute, she would go over the student's errors, have the student read it again and after repeated reads the student would have increased fluency (Tr. pp. 620-21). The teacher testified that the eighth grade content material used would include eighth grade textbooks and worksheets generated by the classroom teachers (Tr. p. 620). The teacher further stated that she would address the student's goal to correctly spell non-phonetic words by breaking up the word into smaller words or chunks and the student would look, practice, say, write, and hopefully master them (Tr. p. 622). The teacher also indicated that organizational strategies were addressed through daily assignment notebooks or agenda checks, weekly binder checks to make sure the students have their notes in the proper places, that their assignments are recorded and that long range assignments are broken into smaller manageable tasks (Tr. p. 623). She indicated that the staff makes sure that there is communication with home through e-mail, the outline, or the agenda (id.). The teacher stated that to address study skills, a set of class notes is available and the teachers do a daily review of the notes and put together study guides for students prior to tests (id.). The teacher also described "tenth period" as a program she had initiated for students that need extra time to complete their work or are unable to get their homework done (Tr. p. 624). She stated that "it's a time for them to come for extra help, for homework assistance, for study skill assistance, for test preparation" (id.).

Based on the above, I find that the programs offered for both the 2007-08 and 2008-09 school years would have conferred educational benefits on the student and would have met his special education needs. Contrary to the parent's assertions that the district did not offer methodology appropriate to address the student's dyslexia, specifically an "Orton-Gillingham type" multisensory, direct instruction program, the hearing record reflects that the district did have multisensory programs in place. Although an IEP must provide for specialized instruction in the student's areas of need, a CSE is not required to specify methodology on an IEP and the precise teaching methodology to be used by a student's teacher is generally a matter to be left to the teacher (Rowley, 458 U.S. at 204; M.M. v. Sch. Bd. of Miami-Dade County, 437 F.3d 1085, 1102 [11th Cir. 2006]; Lachman v. Illinois State Bd. of Educ., 852 F.2d 290, 297 [7th Cir. 1988]; Application of the Dep't of Educ., Appeal No. 08-075; Application of a Child with a Disability, Appeal No. 07-065; Application of a Child with a Disability, Appeal No. 07-054; Application of a Child with a Disability, Appeal No. 07-052; Application of a Child with a Disability, Appeal No. 06-022; Application of a Child with a Disability, Appeal No. 05-053; Application of a Child with a Disability, Appeal No. 94-26; Application of a Child with a Disability, Appeal No. 93-46).

Lastly, I disagree with the parent's contention that the goals and objectives on the August 2007 IEP were not measurable or consistent with the student's academic ability. With regard to the student's 2007-08 IEP goals, the evaluative criteria listed for each goal is indicated with the percentage of accuracy required of the student to master the goal, as well as additional criteria indicating the level of independence or assistance allowed, and the number of trials or the

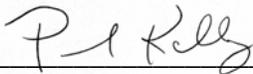
number of work samples required (Joint Ex. 102 at pp. 5-6). As such, the goals have the requisite information to assess whether the student is progressing or has met each goal. I also disagree with the parent's contention that the goals on the May 2008 IEP were not consistent with the student's academic abilities. With regard to the student's 2008-09 IEP goals, the hearing record reflects that the student's present level of educational performance was summarized and reviewed at the May 2008 CSE meeting and that a consensus was reached on all abilities, needs, goals, program modifications, and test accommodations (Joint Ex. 126 at p. 2). I note that the CSE participants who were most familiar with the student's functional levels, namely, staff at Gow, agreed with the goals as they were written on the May 2008 IEP (see Joint Ex. 126 at p. 2).

Based on the above, I find that the district's recommended programs for the 2007-08 and 2008-09 school years would have conferred educational benefits on the student and would have offered the student a FAPE in the LRE. Having determined that the district offered the student a FAPE in the LRE, I need not reach the issue of whether Gow was appropriate for the student and the necessary inquiry is at an end (M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; Walczak, 142 F.3d at 134; Application of a Student with Disability, Appeal No. 08-158; Application of a Child with a Disability, Appeal No. 05-038).

I have considered the parties' remaining contentions and find that I need not address them in light of my determinations.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
June 22, 2009**



**PAUL F. KELLY
STATE REVIEW OFFICER**